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530	7590	09/02/2004	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			VANATTA, AMY B	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/904,427

Applicant(s)

TISS ET AL.

Examiner

Amy B. Vanatta

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15, 16, 23-48 and 57-61 is/are pending in the application.
- 4a) Of the above claim(s) 7, 11, 15, 16, 29, 33 and 36-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-10, 12, 13, 23-28, 30-32, 34, 35, 43-48, 57 and 59-61 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restriction***

1. Regarding Applicant's comment that claim 11 appeared to be left off of the Examiner's listing of claims readable on the elected species, the examiner maintains that claim 11 is not readable on the elected species. Claim 11 recites that the attachment assembly comprises a depression in the center section. This depression 114 is shown in Fig. 13 (in place of the V-shaped notch). A depression 116 is also shown in the embodiment of Fig. 15. The species of the attachment assembly shown in Fig. 13 and Fig. 15 were not elected. Rather, the notch shown in Figs. 1 and 8 was elected. Thus, claim 11 and similar claim 33 are not readable on the elected species and these claims remain as being withdrawn from consideration.

### ***Claim Objections***

2. Claim 26 is objected to because of the following informalities:

Claim 26, line 5, contains a typographical error: "section" should read as "sections".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-3, 8-10, 12, 13, 23-28, 30-32, 34, 35, and 43-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 15, recites "the free end" without antecedent basis. This recitation renders the claim indefinite since the holding members were not previously set forth as necessarily having a free end.

Similarly, claim 23, line 14, recites "the free end" without antecedent basis. This recitation renders the claim indefinite since the holding members were not previously set forth as necessarily having a free end. Also, claim 26, which depends upon claim 23, recites the holding members as each having "a free end", which further renders the claims indefinite since it is unclear whether the free ends set forth in claim 26 are the same free ends which were previously recited in claim 23.

In claim 43, lines 15-16, the recitation that the holding members "hold the collar is positioned" renders the claim indefinite. It is unclear what is meant by this recitation.

The remaining claims listed above are rendered indefinite by their dependence upon the indefinite claims discussed above.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1, 2, 4, 8, 9, 23, 24, 26, 30, 31, 57, and 59-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Steele (US 2,155,065).

Regarding claim 1, Steele discloses a collar protector including a body made of resilient material and having a relatively wide center section (see center region near tongues 12,15; Fig. 2) and spaced side sections (5) each respectively connected at one inner end to the center section and disposed to extend in opposite directions from the center section. The center section has an attachment assembly (12,15) formed therein for releasable engagement with the collar button. Each of the side sections has a resilient holding member (6). The resilient holding members (6) are each formed from, connected at its same inner end with and extending in the same direction from the inner connected end of its associated one of the side sections (5) to dispose in assembled position the free end of each respective holding member for operative association with the collar of the garment as claimed.

Regarding claims 4, 23, and 26 Steele discloses a collar protector for the collar of a garment wherein the collar (see "collar neckband 7"; pg. 1, col. 1, lines 49-51) has an inner face and an outer face (pg. 1, col. 1, lines 49-50). The protector comprises a body made of resilient material and having a relatively wide center section (see center region near tongues 12,15; Fig. 2) and spaced side sections (6) each respectively connected at one inner end to the center section and disposed to extend in opposite directions from the center section. The center section has an attachment assembly (12,15) formed therein for releasable engagement with the collar button. Each of the side sections has a resilient holding member (5) comprising an elongated strip (5) formed

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from, connected at its same inner end with and extending in the same direction from the inner connected end of its associated one of the side sections (6). Each elongated strip (5) has a free end remote from its connected end disposed in assembled position on opposite sides of the center section to engage the outer face of the collar (i.e. collar band 7); see pg. 1, col. 2, lines 17-21, disclosing that strips 5 lie against the outer face of the collar neckband 7.

The body has an arcuate shape in the lengthwise direction (see Fig. 2) as in claims 8 and 30. The body has an arcuate shape transverse to the lengthwise direction (see slight arcuate profile in the transverse direction shown in Fig. 2, or alternatively, see arcuate shape formed at the bent connection 9) as in claims 9 and 31.

The attachment assembly includes an inwardly extending cutaway section (12) with a wide outer end (see bottom end of tongue 12) and a restricted inner end (see upper end of tongue 12) as in claims 2 and 24.

Regarding claim 57, Steele discloses a combination of a garment having a collar and a collar protector comprising a generally unitary body made of a resilient material having a center section (see center region near tongues 12,15; Fig. 2) and at least two spaced side sections, the spaced side sections each respectively connected at one end to the center section and extending in opposite directions from the center section. Each of the spaced side sections has at least one first arm (6) extending from the center section and disposed for engagement with the inner face of the collar and at least one second arm (5) disposed for engagement with the outer face of the collar as claimed (see page 1, col. 2, lines 17-30). The center section has an attachment assembly

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(12,15) for releasably connecting the collar protector to the collar button. The first and second spaced arms (5 and 6) are disposed in side by side relationship as in claims 59 and 61. The arms (5,6) are curved as in claim 60 (see Fig. 2). The arms are curved along the longitudinal line as in claim 61 (see Fig. 2).

7. Claims 1, 4, 23, 26, 57, and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Teague (US 3,107,830).

Teague discloses a collar protector including a body made of resilient material and having a relatively wide center section and relatively wide and spaced side sections (18) which are each respectively connected at one inner end to the center section and disposed to extend in opposite directions from the center section to form a free end. Each of the side sections has a resilient holding member (15) disposed for operative association with the collar as claimed. Each holding member 15 comprises an elongated strip formed from its associated side section, with the elongated strip being connected at one end to the side section and having a free end remote from the connected end, disposed to engage the outer face of the collar (see Fig. 1), as in claims 4 and 26. Each resilient holding member 15 is formed from, connected at its same inner end with, and extending in the same direction from the inner connected end of its associated one of the side sections 18 to dispose in assembled position the free end of each holding member, for operative association with the collar as claimed. The center section has an attachment assembly (folded over portions 20a, 20b) formed therein. The folded over portions 20a, 20b function to hold the collar support in place over the

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collar button (see button in Fig. 1). Since the collar protector is held in contact with the button and secured in this position, the attachment functions to provide "releasable engagement" with the collar button as in claims 1, 4, and 23.

Regarding claim 57, Teague discloses a generally unitary body made of a resilient material having a center section and at least two spaced side sections, the spaced side sections each respectively connected at one end to the center section and disposed to extend in opposite directions from the center section (Figs. 1 and 2). Each of the spaced side sections has at least one first spaced arm (18). A second spaced arm (15) extends in opposite direction from the center section. The second spaced arm is spaced from the first spaced arm by means of slit 14 (and also by the collar, which extends therebetween in use). The first spaced arm 18 is disposed for engagement with the inner face of the collar, while the second spaced arm 15 is disposed for engagement with the outer face of the collar (see Fig. 1). The first and second spaced arms are disposed in side by side relationship as claimed. The center section has an attachment assembly (folded over portions 20a, 20b) formed therein. The folded over portions 20a, 20b function to hold the collar support in place over the collar button (see button in Fig. 1). Since the collar protector is held in contact with the button and secured in this position, the attachment functions as an assembly for "releasably connecting" the collar protector to the button to the extent claimed in the functional limitation of claim 57.



***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3, 10, 25, 32, 43, 44, 47, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steele (US 2,155,065) in view of Brownfield (US 2,147,519).

Regarding claims 3, 10, 25, and 32, Steele discloses a collar protector as claimed, however the protector is disclosed as made of cardboard rather than polymer or plastic.

Regarding claim 43, Steele discloses a collar protector including a generally unitary body having a relatively wide center section (see center region near tongues 12,15; Fig. 2) and spaced side sections (5) each respectively connected at one inner end to the center section and disposed to extend in opposite directions from the center section. The center section and a first portion of each of the side sections 5 are disposed in a first plane (see curved plane shown in Fig. 2). Each of the side sections has a holding member (6) formed from, connected at its same inner end with and extending in the same direction from the inner connected end of its associated one of the side sections (5). Each of the holding members (6) have a first portion disposed above the first plane (see Fig. 2). The holding members (6) are arranged for operative association with the collar on the garment to hold the collar (7) as claimed. The first plane is curved in the longitudinal direction of the body as in claim 44 and is arcuate as

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n claim 48. Steele shows a tab (9) extending away from the center section as in claim 47. Thus, Steele discloses the structure of claims 43, 44, 47, and 48, however the protector is disclosed as made of cardboard rather than polymer material.

Collar protectors are conventionally made out of thin plastic, as an alternative to cardboard, since plastic is more sturdy and can withstand more stresses being put on it, thus being longer lasting. It is noted that plastic is a polymer material. Brownfield discloses a collar protector and teaches that the device may be made of cardboard or Celluloid (page 1, col. 2, lines 34-38). Celluloid is a known plastic material (thus meeting the limitation of being a polymer material as well). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the collar protector of Steele out of plastic, such as taught by Brownfield, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the collar protector of Steele out of plastic, such as taught by Brownfield, in order to provide a more long lasting, sturdier protector. It is noted that the protector of Steele, modified in view of Brownfield to be made out of plastic, meets the limitation of claims 10 and 32 since the protector of Steele has a three-dimensional shape when bent into its usable form as shown in Fig. 2.

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10. Claims 3, 10, 25, 32, 43, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teague (US 3,107,830) in view of Brownfield (US 2,147,519).

Regarding claims 3, 10, 25, and 32, Teague discloses a collar protector as claimed, however the protector is disclosed as made of cardboard ("paper board") rather than polymer or plastic.

Regarding claim 43, Teague discloses a collar protector including a generally unitary body having a relatively wide center section and spaced side sections (18) each respectively connected at one inner end to the center section and disposed to extend in opposite directions from the center section. The center section and a first portion of each of the side sections 18 are disposed in a first plane. Each of the side sections has a holding member (15) formed from, connected at its same inner end with and extending in the same direction from the inner connected end of its associated one of the side sections (18). Each of the holding members (15) have a first portion disposed above the first plane (i.e. the planes are separated by the thickness of the collar, which lies between the two planes). The holding members (15) are arranged for operative association with the collar on the garment to hold the collar as claimed. Teague shows a tab (20a or 20b) extending away from the center section as in claim 47. Thus, Teague discloses the structure of claims 43 and 47, however the protector is disclosed as made of cardboard ("paperboard") rather than polymer material.

Collar protectors are conventionally made out of thin plastic, as an alternative to cardboard, since plastic is more sturdy and can withstand more stresses being put on it, thus being longer lasting. It is noted that plastic is a polymer material. Brownfield

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discloses a collar protector and teaches that the device may be made of cardboard or Celluloid (page 1, col. 2, lines 34-38). Celluloid is a known plastic material (thus meeting the limitation of being a polymer material as well). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the collar protector of Teague out of plastic, such as taught by Brownfield, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the collar protector of Teague out of plastic, such as taught by Brownfield, in order to provide a more long lasting, sturdier protector. It is noted that the protector of Teague, modified in view of Brownfield to be made out of plastic, meets the limitation of claims 10 and 32 since the protector of Teague has a three-dimensional shape when in its usable form as shown in Fig. 1.

#### ***Allowable Subject Matter***

11. Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 12-13, 27-28, 34-35, and 45-46 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

13. Applicant's arguments filed 6/14/04 have been fully considered but they are not persuasive with regard to Teague. Applicant argues that Teague does not disclose a "means for affixing the collar protector to a collar button associated with the conventional collar on a garment". The Examiner notes that such a limitation (i.e. a "means for affixing") is not claimed. Claims 1, 4, and 23 merely recite an attachment assembly for releasable engagement with the collar button. Teague does show an attachment assembly which provides releasable engagement with the collar button. See folded over portions 20a, 20b which function to hold the collar support in place over the collar button (see button in Fig. 1), thus holding the protector in releasable engagement with the button. Since the collar protector is held in contact with the button and secured in this position, the attachment functions to provide "releasable engagement" with the collar button as in claims 1, 4, and 23. Claim 57 recites an attachment assembly for releasably connecting the collar protector to the collar button. The folded over portions 20a, 20b function to hold the collar support in place over the collar button (see button in Fig. 1). Since the collar protector is held in contact with the button and secured in this position, the attachment functions as an assembly for "releasably connecting" the collar protector to the button to the extent claimed in the functional limitation of claim 57.

14. Applicant's arguments with respect to Ashley, Taimisto, Macrides, and Manaster have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 703-308-2939. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Amy B. Vanatta  
Primary Examiner  
Art Unit 3765